

2. Defendant John R. Cooper is sued in his official capacity as the Director of ALDOT. ALDOT is the state agency responsible for transportation infrastructure in Alabama. ALDOT maintains its central office in Montgomery County, Alabama. Alabama Administrative Code 450-1-1-.05.

3. Plaintiffs are owners and tenants of a business center located at the intersection of State Highways 21 and 431 in Calhoun County, Alabama. Plaintiffs allege that the Defendants caused damage or altered the access to their business center after reconstruction of the intersection. (Exhibit 2, ¶ 7). Plaintiffs allege that the intersection modification caused obstruction and occupation that materially impaired the access to their property. (Exhibit 2, ¶ 7).

4. The subject properties are located in Calhoun County, Alabama. Plaintiffs Christian Corner Meats, LLC, Shotgun Sports Supply Company, Inc., Anniston Salon Center, David King Automotive, C& C Small Engines, J&S Boots and the Laundry Basket are Alabama Companies. Plaintiffs Debra Smith Young, and Robert David Young are listed as individual defendants in the Amended Complaint. (Exhibit 2, ¶ 3). Neither the Complaint nor the Amended Complaint state the state or county of residence for the individual plaintiffs.

5. On January 9, 2017, Defendants filed a Motion to Dismiss the Complaint and a Brief in Support, based on sovereign and state-agent immunity,

Plaintiffs failure to pled a valid inverse condemnation, and Plaintiffs failure to prove a taking of private property had occurred. (Exhibits 3 and 4).

6. On April 18, 2017, the Circuit Court of Calhoun County, Alabama, held a hearing on Defendants Motion to Dismiss. (Exhibit 5). At the hearing, the Circuit Court did not rule on Defendants Motion but ordered Plaintiffs to amended their complaint.¹

7. On July 11, 2017, Plaintiffs filed an Amended Complaint. (Exhibit 2).

8. Plaintiffs' Amended Complaint alleges a deprivation of rights violation and specifically invokes the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C § 1983. Accordingly, these claims are proper for removal pursuant under 28 U.S.C. § 1443. (Exhibit 2, ¶ 8).

9. Furthermore, Plaintiffs' Amended Complaint asserts causes of action presenting federal questions arising under federal law. Specifically, Plaintiffs make a claim under the Fifth Amendment to the United States Constitution,

¹ Defendants contend the Circuit Court did not have and can never obtain subject matter jurisdiction over this matter due to their absolute immunity under Art. I §14. Rule 12(b)(1) Ala. R. Civ. P.; *Ex parte Alabama Department of Transportation*, 6 So. 3d 1126 (Ala. 2008). Plaintiffs' complaint is a void act and they cannot amend the complaint because the Court lacks subject matter jurisdiction. *Ex parte Alabama Department of Transportation*, 978 So. 2d 17, 26 (Ala. 2007)(“Good Hope”); *accord Ex parte Alabama Dep't of Transp.*, 990 So. 2d 366 (Ala. 2008). If a trial court lacks subject matter jurisdiction, it has no power other than to dismiss the complaint. *Ex parte Blankenship*, 893 So. 2d 303, 306-07 (Ala.2004). “Any other action taken by a Court lacking subject matter jurisdiction is null and void.” *Good Hope*, 978 So. 2d at 27 (Ala. 2007).

through the Fourteenth Amendment, alleging that the Defendants subjected the Plaintiffs to deprivation of rights secured by the Constitution. Plaintiffs further claim that they are entitled to compensation under 42 U.S.C. § 1983 for the alleged taking of their property. (Exhibit 2, ¶ 8).

10. Plaintiffs' Amended Complaint was filed on July 11, 2017, and Defendants were electronically served the same day. Filing of the notice of removal is timely pursuant to 28 U.S.C. § 1446.

11. The notice of removal filed in the Circuit Court of Calhoun County, Alabama, is hereto attached as Exhibit 6.

12. Pursuant to 28 U.S.C. § 1446, Defendants have attached a copy of all the process and pleadings served on each. These documents are attached as Exhibits 1 through 7.

13. This action is a civil action of which this Court has jurisdiction under 28 U.S.C. § 1331 and is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) in that it arises under federal law.

14. ALDOT and Cooper's Motion to Dismiss the Amended Complaint is filed contemporaneously herewith.

WHEREFORE, Defendants ALDOT and Cooper seek that the removal of this cause to the United States District Court for the Northern District of Alabama, Eastern Division be effective and no further or other proceedings maybe had with

respect to this matter in the Circuit Court of Calhoun County, Alabama, pending a final decision and determination of the controversy in this Honorable Court.

RESPECTFULLY SUBMITTED,

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

SAMUEL KEITH FULLER, *et al.*,)

Plaintiff,)

v.)

**ALABAMA DEPARTMENT OF
TRANSPORTATION, *et al.***)

Defendants.)

CASE NO. _____

CERTIFICATE OF SERVICE

I hereby certify that, on **July 20, 2017**, I have served the foregoing on the following by placing copies thereof, addressed as indicated below, in United States Mail, First Class Postage prepaid:

Mr. Thomas J. Knight, Esq.
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